

Federal Communications Commission

DA 00-1260

JUN 9 3 27 PM '00

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-107
Table of Allotments,)	RM-9891
FM Broadcast Stations.)	
(Florence and Comobabi, Arizona))	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 31, 2000

Released: June 9, 2000

Comment Date: July 31, 2000

Reply Comment Date: August 15, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Desert West Air Ranchers ("petitioner"), licensee of FM Station KCDX, Channel 276C1, Florence, Arizona, requesting the substitution of Channel 276C for Channel 276C1 at Florence and modification of its license accordingly to specify operation on the higher class channel. Additionally, to accommodate the requested substitution at Florence, petitioner requests either the deletion of vacant reserved Channel *275A at Comobabi, Arizona, or its replacement with Channel *289A.¹ Petitioner stated a commitment to apply for Channel 276C if it is allotted to Florence, as requested.

2. Petitioner states that the requested modification of Station KCDX to operate on Channel 276C at Florence, which is mutually exclusive with its current operation on Channel 276C1, would enable it to increase the degree of coverage within its 60 dBu contour from its present level of service to an area of 16,458 square kilometers containing 89,902 people to an area of 26,486 square kilometers encompassing 791,975 people. Further, petitioner advises that the requested use of Channel 276C at Florence from its proposed transmitter site at coordinates 32-48-45 NL and 110-57-30 WL is short spaced to vacant Channel 276B, Cananea, Sonora, Mexico. However, in accordance with the terms of the 1992 FM Broadcasting Treaty ("Treaty") between the U.S. and Mexico. Petitioner remarks that such short spaced proposals are entertained as specially negotiated allotments, provided contour protection is afforded toward the affected facility or allotment. In this instance, petitioner states that if Channel 276C is allotted to Florence, Station KCDX would have restricted facilities towards the vacant Mexican allotment.²

¹ The distance between Florence and vacant Channel *275A at Comobabi is 110.8 kilometers whereas a distance of 165 kilometers is required between first adjacent Class A and Class C channel allotments.

² Specifically, petitioner advises that Channel 276C at Florence would be limited to 3.16 kW ERP at 474 meters HAAT in the direction of Channel 276B at Cananea.

3. As to the requested deletion of Channel *275A at Comobabi to accommodate its proposal, petitioner states that the reserved allotment was made over fifteen years ago, originally as Channel *276A. The allotment was subsequently modified to Channel *275A in MM Docket No. 95-127, and allotted as a negotiated short spaced allotment with respect to Channel 274B, Nogales, Sonora, Mexico. Given the continuous idleness of the allotment, petitioner suggests that it be deleted from the Table of FM Allotments without a replacement. However, in the event the Commission believes the retention of a reserved allotment is necessary, petitioner advises that Channel *289A could be substituted for Channel *275A at Comobabi, utilizing a new reference point located 8 kilometers (5 miles) west of the community at coordinates 32-03-00 NL and 111-53-00 WL.³ Petitioner acknowledges that Channel *289A would be short spaced with Station XHNESFM, Channel 290C, Nogales, Sonora, Mexico, and therefore would also require equivalent protection in accordance with the Treaty.⁴

4. In consideration of the above, we believe the proposal warrants consideration since the modification proposal at Florence would enable Station KCDX to provide an expanded service to the community. Therefore, we will propose to modify the license for Station KCDX, as requested. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 276C at Florence, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. We also propose to delete Channel *275A at Comobabi, as requested by the petitioner to accommodate its proposal. As indicated above, Channel *289A will be optionally proposed for allotment at Comobabi in the event an expression of interest in the retention of a Class A reserved channel is received. However, if it can be demonstrated that a channel is available to that locality in the reserved portion of the FM band, no replacement channel will be allotted at Comobabi.

5. Channel 276C can be allotted to Florence at the petitioner's requested site located 46.8 kilometers (29.1 miles) southeast of the community at coordinates 32-48-45 NL and 110-57-30 WL, consistent with the domestic minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, as well as the technical requirements of Section 73.315. However, Mexican concurrence must be obtained for Channel 276C at Florence as a specially negotiated, restricted allotment towards vacant Channel 276B, Cananea, Sonora, Mexico. Additionally, Channel *289A can be substituted for Channel *275A at Comobabi without a site restriction at reference coordinates 32-03-29 NL and 111-47-58 WL. However, in the event Channel *289A is substituted at Comobabi,

³ Petitioner also remarks that the noncommercial portion of the FM band (Channels 201-220) is open for Comobabi, but did not provide technical information to confirm its assertion. If the availability thereof should be demonstrated by the petitioner, we will not reserve a channel in the increasingly scarce commercial FM band for use at Comobabi.

⁴ Petitioner's technical analysis asserts that as natural terrain shielding provides the required protection in the direction of the Mexican facility it would negate the use of a directional antenna or reduction in power for Channel *289A at Comobabi, if allotted. However, at the allotment level the Commission does not recognize terrain shielding for the purpose of avoiding interference since its effects on signal propagation have not been established.

Mexican concurrence must also be obtained for its use as a specially negotiated restricted allotment towards Station XHNESFM, Channel 290C, Nogales, Sonora, Mexico.

6. In consideration of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

OPTION I

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Comobabi, Arizona	*275A	--
Florence, Arizona	276C1	276C

OPTION II

Comobabi, Arizona	*275A	*289A
Florence, Arizona	276C1	276C

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before July 31, 2000, and reply comments on or before August 15, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Mark N. Lipp, Esq.
Shook Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the

Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposals discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.